WP(C) 1/2007

BEFORE

THE HON'BLE MR JUSTICE AMITAVA ROY

Heard Mr. RP Sarmah, learned counsel for the petitioner and Mr. TC Chutia, learned Standing counsel, Board of Secondary Education, Assam. Also Heard Ms. Bhuyan, learned Standing counsel, PWD.

2. The petitioner assails the decision contained in the communication dated 19.02.2002, of the Deputy Secretary to the Government of Assam, Public Works Department, addressed to him rejecting his request for correction of his date of birth as entered in his service book. Challenge has also been laid to the order dated 28.04.2003, passed by the Secretary, Board of Secondary Education, Assam (hereafter for short referred to as the 'Board'), rejecting his representation dated 27.03.2001, seeking correction of his date of birth/age reflected in the admit card issued by it (Board) at the time of his appearing in the Higher Secondary School Leaving Certificate Examination, 1967 (hereafter also referred to as the 'Examination').

3. The pleaded facts shortly put, are that the petitioner has been serving as an Executive Engineer in the Public Works Department of the State and in terms of the date of birth/age recorded in the service book, is due to retire on superannuation of 30.09.2007. In the admit card issued by the Board enabling him to appear in the examination in the year 1967, his age was recorded 18 years, 5 months and 16 days as on 01.03.1967. According to him, his date of birth was 01.10.1950. Having detected the error, he approached the Saniram Higher Secondary School, Tinsukia from where he appeared in the examination and on inquiries being made, it came to light that the mistake occurred at the time of furnishing of his particulars by the school to the Board. Situated thus, the petitioner on 05.06.1967, affirmed an affidavit before the Magistrate 1st Class, Dibrugarh to the effect that on 01.03.1967, his age was 16 years 5 months as per his Horoscope and not 18 years 5 months and 16 days as recorded in the admit card. The petitioner has pleaded that thereafter, he submitted a representation before the Board along with the affidavit and other documents corroborating his claim before the Board for consideration. Thereafter, he joined the services of the department. As his representation submitted with the Board in 1967, did not yield any result, he reiterated his request with it, through a representation dated 21.07.2000 along with attested copies of the birth certificate, primary school certificate, affidavit dated 05.06.1967, HSLC pass certificate forwarded through the Principal of the School. He followed in up with representations dated 27.03.2001 and 23.05.2001, before the Board. Parallely the petitioner submitted a representation on 31.07.2001, before the departmental authorities, making the same claim, which however, was rejected on 19.02.2002. As his request for alteration of his date of birth did not meet any positive response, the petitioner turned to this Court with W.P(C) No. 5947/2002, which was disposed of on 17.09.2002, with a direction to the Secretary, Board of Secondary Education, Assam, to consider and dispose of the representation dated 27.03.2001, along with the documents appended thereto by passing a speaking order. By the impugned order dated 28.04.2003, the said authority having rejected the petitioner's representation, he is again before this Court.

The Board in its affidavit, in substance has pleaded that any request for correction of date of birth/age, as recorded in an admit card, is to be made in terms of its Regulations and the related notification within a period of three years from the date of commencement of the concerned examination. It has been stated that for such an exercise, the date of birth in the school admission register is of decisive relevance and that an affidavit is not construed to be adequate or appropriate for the purpose. The answering respondent, maintained that the petitioner's representation could not be considered as per the Rules/Regulations of the Board and that the order of rejection was as per its prevalent norms. The reply affidavit of the petitioner being in reiteration of the statements made in the writ petition, the same need not be traversed over again.

4. Mr. Sarmah, has urged that in face of the direction of this Court to the Board to consider and dispose of the petitioner's representation, it (Board), could not have invoked the bar of limitation of three years. As the impugned order on the face of it, discloses non-consideration of the documents submitted by the petitioner along with the representation, the same is not inconformity with the letter and spirit of the order of this Court and is therefore, liable to be rejected.

5. Mr. Chutia, with reference to the Regulations of the Board, has urged that as the petitioner's representation being barred by time, the impugned order cannot be faulted with. According to him, the documents annexed to the writ petition dated 27.03.2007, were discarded being not cognizable in terms of the existing Regulations of the Board.

6. The rival submissions have been duly considered. The operative directions contained in the order dated 17.09.2002, having a vital bearing on the process under assailment deserves extraction : -

\It is ordered that the Respondent No. 4, the Secretary, Board of Secondary Education, Assam shall consider the representation/application dated 27.03.2001 (Annexure 7 to the writ petition) presented before him by the petitioner and on proper verification and examination of the same along with all the relevant documents annexed herewith shall dispose of the said representation by passing a speaking order in accordance with law within a period of two months from the date of receipt of this order\.

7. It is apparent therefrom that the Secretary Board of Secondary Education, Assam, was directed to consider the representation/application dated 27.03.2001, submitted by the petitioner and to take an appropriate decision thereon, following a proper verification and examination thereof and the relevant documents annexed thereto.

8. In the above view of the matter, the prescription of three years by the Board for entertaining an application for correction of date of birth/age, has no application to the facts of the case.

9. A plain reading of the impugned order manifests that the Secretary, Board of Secondary Education Assam had dismissed the birth certificate dated 24.12.1997, primary school certificate dated 17.02.1999 and the affidavit of correction of age as unacceptable as per its existing Regulations. This, in my view, is opposed to the letter and spirit of the direction of this Court. The said authority having been directed to consider and dispose of the petitioner's representation dated 27.03.2001, on a scrutiny of the accompanying documents, it was incumbent on him to evaluate the same on merits and arrive at a conclusion. This apparently has not been done. The copy of the birth certificate dated 24.12.1997 (Annexure 5 to the writ petition), seems to have been issued by the Chief Registrar, Health Department, Government of Assam, indicating the petitioner's date of birth to be 01.10.1950, as entered to the Register No. 4036/97. The school certificate issued by the Head Mistress, Borguri Primary School, Tinsukia, where the petitioner claims to have studied before taking admission evidences that his age on 31.12.1958, was 8 (eight) years, 3 (three) months. Arithmetically, the age computable therefrom tallies with the one appearing in the birth certificate dated 24.12.1997.

Be that as it may, in the face of the clear and unambiguous directions of this court as per the order dated 17.09.2002 in W.P(C) No. 5947/2002, the Secretary to the Board of Secondary Education, Assam, was obliged to take note of these documents and if need be cause further inquiries to be made before taking a decision on the petitioner's representation. Instead, the said documents have been outrightly rejected without examining the same on their merit.

10. In the above view of the matter, the unhesitant conclusion is th at the impugned order dated 28.04.2003, is not in accord with the directions of this Court and, therefore, cannot be sustained in law. Accordingly, it stands q uashed. However, keeping in mind, the nature of the claim made by the petitione r and in view of the probe called for, this Court refrains from arriving at a co nclusion on the basis of the materials on record. It is considered expedient in the attending facts and circumstances to remit the matter to the Secretary, Boa rd of Secondary Education, Assam to deal with the petitioner’s representation da ted 27.03.2001, along with the accompanying documents and take an appropriate de cision therein. It is made clear that this Court has not expressed any opinion on the merit of the petitioner’s claim and it would be within the exclusive doma in of the aforementioned authority to decide the petitioner’s representation in its wisdom.

In view of the background as above, the said authority concerned, would, however , conduct the exercise in terms of the earlier order of this Court. As the peti tioner is going to retire on 30.09.2007, the exercise as ordered should be compl eted as expeditiously as possible and not later than one month from the date of receipt the certified copy of this order.

11. Depending on the decision (s) taken on the petitioner’s represen tation, it would be open for him (petitioner) to approach the authorities of the department for necessary reliefs, if available to him. The petition stands all owed in the above terms. No costs.